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of seeing in instinct nothing but the functioning of a set of inherited neuro-muscular reflexes. He recognizes the fact that the individual is endowed at birth with a set of psychophysical tendencies (the author would probably prefer to say "reaction systems") which develop in partial independence of subsequent experience. To these he reserves the name instincts. He also recognizes that these instincts constitute an integral and important part of all, or nearly all, human behavior which is in that sense instinctive behavior. The only form of human behavior which is not instinctive is rational behavior, which arises in the course of instinctive behavior and is "always initiated by reflective consideration of ways and means."

The thought of the article is developed largely through the critique of other authors, principally Stout, McDougall, Thorndike and Drever. The presentation is somewhat abstract and presupposes acquaintance with the author's conception of "conscious behavior." It will repay the careful study of every student of psychology.

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PRINCIPII DI CRIMINOLOGIA. Vol. II. Part Generale. (Circostanze Discriminanti, scusanti ed aggravanti.) Del *Professor Francesco De Luca*, dell' Università di Catania. Cav. Vincenzo Giannotta, Editore, 1920.

[Principles of Criminology. Vol. II. General Part. (Justifying, excusing and aggravating circumstances.) By Professor Francesco De Luca of the University of Catania, Sicily. Cav. Vincenzo Giannotta, Publisher, 1920.]

We should have more books of this sort on criminology. It gives us Americans just what we need. It is a philosophic discussion of the bases of law—a discussion which, because we call it philosophic, is none the less vital to the proper comprehension of the law and to the adequate treatment of the criminal. The translations of European treatises which have within the last decade appeared in this country have already produced advantageous marks upon our scholarship, upon our law, and upon the attitude of teachers, students, lawyers and judges.

The work is an application of psychology, psychiatry, biology and sociology to law. The law cannot progress unless it keep informed of the progress in other sciences. The law must of necessity be based upon other sciences; and for law to close its eyes to the advances in those sciences is to miss the path that leads to truth and justice. Anglo-American law has moved on in conformity with changes in life in England and in this country; but the movement has been slow, and has not kept pace with the changes in life. Anthropology, psychology, biology, psychiatry, economics, sociology, criminology, philosophy have all contributed elements for the enlightenment of law, but law has been a willful soul and has obstinately refused to listen to the promptings of those sciences upon which it must rest. There is ample

evidence in this book of this halting of the law along the road of progress, and there is implied a strong command that we seek a new way by applying a new method. Law will deserve the respect of men when men see that it harmonizes with the facts of life with which they come into daily contact. The application of the knowledge afforded us by sciences auxiliary to law during the past fifty years can no longer be avoided.

The first great step should be taken by the law school. Even in this sublimely practical country, where the university man, the thinker and the scholar are still scoffed at as angels beating their ineffectual wings in vain—if they are not really considered devils swishing their ineffectual tails—the “practical” men are taking note of the discoveries of the dreamers and are applying them in their daily work. But this business is slower than it ought to be. The process can be hastened by the preparation in the law schools. Let the student understand the value of other sciences for law. Let him understand, indeed, the very bases of law—which these sciences are. Law in and of itself—the technical skeleton now known as law—is a dry and futile thing. It lands us more and more into a morass, economic, social and political. The way out of this morass is by the social and the biologic sciences; and these should be taught not as separate entities with no relation to other sciences and particularly to law, but as co-related branches of knowledge; in fact, as part and parcel of the science and the art of law.

The domain of Criminology, as understood by the author, is restricted—I had almost said, is peculiar. He defines Criminology as the “science of criminal law and procedure and of penology. It is a chapter of the new sciences of criminal anthropology and of criminal sociology.” (p. 265.) This conception is too narrow. The masters of the Positive School broaden the scope to include criminal anthropology, criminal sociology, criminal cosmics, criminal law and procedure, penology, and prevention. It is true that the cry for specialization was heard among the Positivists—and De Luca is a Positivist (p. 20)—over twenty years ago because of the rapidly accumulating knowledge and the widening of the horizons, making it difficult, if not impossible, for one man to embrace the whole subject as an expert. But it is no less true that when we speak of Criminology we include the seven divisions I have indicated above. So that instead of criminology’s being a chapter of criminal anthropology and criminal sociology, these two sciences are parts of the larger whole called Criminology—the Science of Crime.

The contents of this book, then, deal with the effect of the study of certain basic sciences—psychology, psychiatry, economics, sociology, biology, philosophy—upon criminal law and procedure and upon the treatment of the criminal. The advances made in these sciences, are related to the circumstances in which crimes are committed and the criminal is treated accordingly. More specifically, the author examines justifying, excusing, extenuating and aggravating circumstances; presents and criticises the previous positions held, and seeks a new orienta-

tion for the future treatment of cases in which these circumstances play their part.

The method is no scissors and paste affair. The author presents opinions of other authors—indeed, the array of authors is numerous and stimulating—and this in no desultory manner, but in clear, compact and comprehensively logical form. He examines these views, he suggests modifications, he suggests criticisms; he accepts propositions, he denies. And finally he rounds out the discussion of the various questions with illuminated opinions of his own.

For these Europeans are not afraid to express their views. They have reached in Europe the stage of tolerance for political, economic and social views. There is no fear or hesitancy or reticence across the water. A man is protected by the highest authorities in the expression of the most unwelcome—and it may sometimes be, unsound—opinions. Our European university brothers have conquered the right to speak as knowledge, experience and conscience dictate. The world in general there has recognized that real progress is possible only where the clash of discordant views has had its effect. The robust evidence of plain speaking and high thinking afforded by this book is another of the priceless gifts European literature in all its forms is making us.

The author declares himself to be an evolutionary socialist (p. 282). I do not know how De Luca came to the study of the social question. He may have come to it by way of his study of crime, or by way of his study of criminal law. But this I know, that many roads—if not all roads—lead to Rome; that whether the subject be psychology, or psychiatry, or anthropology, or economics, or sociology, or even biology—the final question posed is the social question. That is the full and abounding sea to which all men go down in ships, provided always that these sciences are studied as they ought to be. We may study any of them in our halls of learning without becoming conscious of the only thing worth while being conscious of in life—this social question. The road may be by crime or by law, but the goal is the economic, the political and the social arrangements of society. You cannot escape it in criminology. You ought not to be able to escape it—as we do—while going through our universities and through our experiences outside in the maelstrom of life. Some day all the social and the biologic and the legal sciences will be taught with a view to the harmonization of these sciences with the life of the time—and this will inevitably entail the discussion of the social organization in which we live.

In contrast, therefore, to the anthropological school, De Luca believes in the strong dominance of the social factor in crime. "The social environment is one of the factors of crime. I believe, indeed, that it is one of the principal factors, direct and indirect. I recognize the intimate connection between penitentiary questions, between social questions and the problem of delinquency" (p. 208).

To come to closer quarters with the particulars: De Luca discusses the facts that take away all fault from an act; those that excuse

or extenuate it, and those that aggravate it. And this discussion brings him, of course, to individualization. The "particular temperament" of the criminal ought to be specially regarded to find the proper means of social defense (p. 133). And so to apply the principle to blocks of criminals (an extension of individualization to large classes) he advocates mitigating circumstances for criminals of occasion and criminals of passion (p. 160). Ignorance of criminal law does not excuse, because it is the minimum of ethics which is required in society (p. 6). But ignorance of other law, civil or administrative, the lack of observance of which cannot overturn the juridical organization, may excuse. Errors of fact when essential or substantial do not excuse; as when A shoots B meaning to shoot C. When these errors of fact are accidental or accessory then they do excuse—as where one takes property thinking it is his—under color of right, in our law phrase.

"Mental infirmity consists in any grave disturbance of the mind because of which the person affected does not think, does not feel, does not will—and does not act—like the average of normal men" (p. 20). Accordingly the law ought to recognize cases of mental alienation which it does not now take cognizance of. The irresistible impulse has been noted by physicians; and has been even introduced into the law in some countries. "Irresistible internal force" finds a place in French, Neapolitan, and Sardo-Italian law. But the State of New York—to give a typical instance of the Anglo-American treatment of it—provides as follows: "A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor" (Sec. 34 Penal Code). The doctrine of the *vis major cui resisti non potest* (the superior force against which it is useless to struggle) was formulated by the Romans and was not dangerous when the doctrine was administered by judges, but became so only when it came to be administered by juries (p. 23). Professor De Luca is, I believe, too optimistic about judges. He has had no experience with American judges, especially in abnormal times as during the late war.

The remedy for the confusion in regard to the irresistible force is to substitute for the doctrine of imputability prevailing in the codes that of the positive school—social responsibility. The moral responsibility is an impossible thing to arrive at. But the measure of social responsibility," to use the terms of the classicalists. Yet these classic-motives—of the psychology of the individual offender—will solve many problems at present lying in obscurity and disorder (p. 24).

Drunkenness is another problem. There are two theories. The drunken man is doubly guilty—guilty of getting drunk, and guilty of the act. The other theory is this: The drunken man cannot be held criminally since he has lost knowledge and consciousness of his acts and can thus be held only for the fact of getting drunk. The New York Code, sec. 1220, makes intoxication no defense, and, indeed, makes the act no "less criminal" by reason of drunkenness. "But whenever the actual existence of any particular purpose, motive, or

intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time in determining the purpose, motive or intent with which he committed the act." The New York Code, therefore, seems to adopt the second view, since for nearly all cases a specific intent is necessary. The Italian criminalists of the middle ages established the doctrine that drunkenness is a mitigating circumstance; and they have been followed by most modern Italian and French writers. The solution, again, for the problems raised here is to be found not in the outworn code doctrine of moral responsibility and measurement of that responsibility, but in social defense and social responsibility.

Age is another mitigating circumstance. All codes now provide for the milder treatment of children. But this is undeniably a breach in the principles upon which these codes stand—a breach made because the realities of life were too strident. Children in New York State, for example, are incapable of crime below 7 and are presumed to be incapable between 7 and 12—but this presumption may be overcome. This solution is not happy. It is the natural result of the doctrine of legal responsibility based upon moral responsibility, and it leads to disastrous conclusions. The application of the doctrine of social responsibility will protect society by treating the offender and prevent his going out again among a society for which he is not fit.

Premeditation and recidivism are usually considered aggravating circumstances. But premeditation may not be an aggravating circumstance. Psychology teaches that it ought sometimes to mitigate the act. Provocation is considered a mitigating circumstance in our law. Yet premeditation and provocation may coexist. Even more provocation there may be the larger you premeditate (p. 763; see also pp. 168-169). And this result is attested by all students of the human mind. The greater the premeditation sometimes, the greater the provocation; and therefore the less the "moral responsibility" and the "legal responsibility," to use the terms of the classicalists. Yet these classicalists do not admit the proposition.

Finally, we come to recidivism, considered as an aggravating circumstance. The author quotes the words of Ferri: "Recidivism is at one and the same time a symptom of individual and of social pathology" (p. 289). The social causes are indicated and the penal ones: the legislator is one of the prime movers of the modern increase of recidivism with his admonitions, his special surveillance, his forced home staying (of the criminal), his short prison sentences, his absurd and cruel penitentiary systems (p. 291). The legislator was thought to be the god who was to save us. But our disillusionment is now complete. Discussion is non-existent or futile: electoral and political interests govern the attitude of the law-maker toward bills. The dissatisfaction with and the distrust for the judge has now no longer, says the author, any foundation (p. 291). Of the two—the legislator and the judge—I should prefer, in normal times and for ordinary criminals, the judge. But in abnormal times and for po-

litical criminals I should prefer—well, one is as irrational and dangerous as the other.

The remedies are economic, political and social (p. 288). The present system is defective. A new organization is in travail. Lock-outs due to overproduction, the non-cultivation of farms, the idleness of the rich, the ferocious laws which hammer the poor whose only crime is to be poor—the whole irrational system of individualistic and competitive production should be superseded by a kinder, more humane, more altruistic and co-operative system where the war of all against all will be a thing of the past, and the doctrine and the practise of one for all and all for one shall be the dominant doctrine and practise of society.

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AN ANALYTIC VIEW OF THE BASIS OF CHARACTER. By *Constance Long*. *Psychoanalytic Review*, VII, 1, January, 1920.

The three aspects of character are (a) the unconscious and its contribution of unknown motive; (b) presence of psychic energy (libido); (c) bi-sexual predisposition of every individual. A problem of homo-sexuality has arisen as a result of the war. "Something male in every woman has been psychologically called for." Dr. Long pleads that homo-sexuality be removed as a penal offense, but that seduction of a minor whether homo or hetero-sexual be made such. Dr. Long claims that physicians must face these sex questions squarely, and also the emotional problems of the married which are as severe as those of the unmarried; but no solution is offered.

PSYCHOLOGY AND HISTORY. By *Harry Elmer Barnes*. Some Reasons for Predicting Their More Active Co-operation in the Near Future. *American Journal of Psychology*; XXX, 4; October, 1919.

A detailed and elaborate resume of the various standpoints from which history has been interpreted in the past and an exposition of the present approach by the psychoanalytic method, which studies history as the reactions of groups of individuals influenced by instincts, desires, and the subconscious with its suppressed wishes and sublimations. The author recognizes that the majority of historians deny that history should concern itself with problems of interpretation, but he declares that a century hence Freud will be regarded as an indispensable tool of the historian. The author's hypothesis is that individualists and anarchists have elaborated their philosophies as outlets and expressions of suppressed desires, and that modern psychology will go far toward interpreting more clearly general policies and attitudes which have played a part in dominating our national history. He asks whether the asceticism of early New England may not have been a psychic compensation for economic chicanery in smuggling and the trade in rum, and whether southern chivalry may